

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP

JONATHAN S. ABADY
MATTHEW D. BRINCKERHOFF
ANDREW G. CELLI, JR.
RICHARD D. EMERY
DEBRA L. GREENBERGER
DIANE L. HOUK
DANIEL J. KORNSTEIN
JULIA P. KUAN
HAL R. LIEBERMAN
ILANN M. MAAZEL
KATHERINE ROSENFELD
ZOE SALZMAN
SAM SHAPIRO
EARL S. WARD
O. ANDREW F. WILSON

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbawm.com

MONDAIRE JONES
VASUDHA TALLA

ERIC ABRAMS
NICK BOURLAND
HANNAH BRUDNEY
DANIEL M. EISENBERG
ARIADNE M. ELLSWORTH
SARA LUZ ESTELA
LAURA S. KOKOTAILO
SONYA LEVITOVA
SARAH MAC DOUGALL
HAFSA S. MANSOOR
SANA MAYAT
HARVEY PRAGER
VIVAKE PRASAD
MAX SELVER
EMILY K. WANGER
RACHAEL WYANT

October 21, 2024

Via ECF

Hon. Naomi Reice Buchwald
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: Morgan, et al. v. City of New York, 23-cv-1079 (NRB)

Dear Judge Buchwald:

This firm represents Plaintiffs Anthony Morgan and David Nieves in this case. Pursuant to the Court's October 23, 2023 Order (ECF No. 24), we write jointly with all Defendants to provide the Court with a status update.

Depositions. Plaintiffs have taken the deposition of Defendant Jalil Telemaque and scheduled the depositions of the three other defendants. Although Plaintiffs noticed all Defendants' depositions for dates in advance of the current October 31, 2024 fact discovery deadline, the parties were unable to schedule Defendant Mary Tinsley-Thomas's deposition until November 8, 2024 due to a medical procedure she underwent in mid-October.

Additionally, although we notified the Office of Legal Affairs for NYC Health & Hospitals/Correctional Health Services ("CHS") on September 25, 2024 that Plaintiffs intended to take the three first responder CHS employees' depositions in October, CHS informed us last week that the City Law Department would be representing the CHS witnesses at their depositions and would need to reschedule their depositions. One of the CHS witnesses will be deposed on October 24, 2024. Counsel for the City has informed us that the other two CHS

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witnesses are not available to be deposed in October and that he will provide their availability in November.

The City has informed us that it intends to wait until lead counsel from the Law Department returns from medical leave on November 4, 2024 to take Plaintiffs' depositions. We have provided possible dates in November for Plaintiffs' depositions but the City has not yet confirmed the deposition dates, and advises it will do so in due course. The City has submitted an application requesting an extension of the deadline for fact discovery in light of the foregoing.

Document discovery. Plaintiffs' document production is complete, including the production of photos from Plaintiffs' site visit at Rikers Island, which took place on September 17, 2024. The City has made several additional document productions in response to Plaintiffs' discovery requests since the parties' last status letter. Plaintiffs have identified several documents missing from the City's productions thus far and the City has been providing these documents on a rolling basis.

Plaintiffs served discovery requests on the Individual Defendants on August 23, 2024. Defendants Telemaque and Tinsley-Thomas stated in their written responses that they do not possess any responsive documents and any responsive documents that may exist are in the possession of the Department of Correction. Defendants Smith and Joseph have not yet responded to Plaintiffs' discovery requests, although the deadline to do so was September 23, 2024.

The City has produced documents pertaining to its employment of Defendants Telemaque, Tinsley-Thomas, and Jeron Smith with the permission of those Defendants' attorneys. Plaintiffs do not believe these productions are complete as they do not appear to contain the Defendants' full disciplinary histories. City Defendants challenge that contention. We are awaiting further information from the City on this issue. Defendant Joseph has not yet produced documents pertaining to his employment.

Plaintiffs served subpoenas on CHS, the Office of the New York Attorney General (OAG), and the Board of Correction (BOC). CHS produced Mr. Nieves's unredacted medical record in response to the Court's so-ordered subpoena, which Plaintiffs have produced to the other parties. OAG took the position that it enjoys sovereign immunity from compliance with federal non-party subpoenas and thus cannot be compelled to comply with Plaintiffs' subpoena, but nonetheless agreed to make a voluntary production of certain relevant documents. Counsel for the City has informed us that he is working with BOC on their response to Plaintiffs' subpoena.

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The parties thank the Court for its time and consideration.

Respectfully submitted,

/s/

Sam Shapiro
Emily Wanger

cc: All parties via ECF